

**Assembly Bill No. 1467**

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Passed the Assembly May 14, 2007

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*Chief Clerk of the Assembly*

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Passed the Senate August 30, 2007

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2007, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Section 6404.5 of the Labor Code, relating to employment.

## LEGISLATIVE COUNSEL'S DIGEST

AB 1467, DeSaulnier. Worker safety.

Existing law prohibits smoking of tobacco products inside all enclosed spaces of places of employment as defined, but exempts certain places of employment, including owner-operated bars and specified warehouses, hotel lobbies, employee break rooms, and meeting and banquet rooms, from this prohibition.

This bill would remove the exemptions that permit smoking in specified bars, warehouses, hotel lobbies, employee breakrooms, and meeting and banquet rooms, while retaining exemptions for other types of businesses. This bill would also prohibit smoking in specified owner-operated businesses regardless of whether or not they have employees.

The violation of the prohibition against smoking in enclosed spaces of places of employment is an infraction punishable by a specified fine and enforcement by local law enforcement and health agencies. By expanding the scope of an infraction, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 6404.5 of the Labor Code is amended to read:

6404.5. (a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of)

enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from the enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that any area not defined as a “place of employment” pursuant to subdivision (d) be subject to local regulation of smoking of tobacco products.

(b) No business owner or operator shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment. “Enclosed space” includes lobbies, lounges, waiting areas, elevators, stairwells, and restrooms that are a structural part of the building and not specifically defined in subdivision (d). Business owner or operator includes any establishment that has been issued a liquor license of any kind by the Department of Alcoholic Beverage Control, regardless of whether the establishment has any employees.

(c) For purposes of this section, a business owner or operator who permits any nonemployee access to his or her place of employment on a regular basis has not acted knowingly or intentionally in violation of this section if he or she has taken the following reasonable steps to prevent smoking by a nonemployee:

(1) Posted clear and prominent signs, as follows:

(A) Where smoking is prohibited throughout the building or structure, a sign stating “No smoking” shall be posted at each entrance to the building or structure.

(B) Where smoking is permitted in designated areas of the building or structure, a sign stating “Smoking is prohibited except in designated areas” shall be posted at each entrance to the building or structure.

(2) Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace.

For purposes of this subdivision, “reasonable steps” does not include the physical ejection of a nonemployee from the place of employment or requesting a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the business owner or operator, or to any employee.

(d) For purposes of this section, “place of employment” does not include any of the following:

(1) Sixty-five percent of the guestroom accommodations in a hotel, motel, or similar transient lodging establishment.

(2) Retail or wholesale tobacco shops and private smokers’ lounges. For purposes of this paragraph:

(A) “Private smokers’ lounge” means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the use of tobacco products, including, but not limited to, cigars and pipes.

(B) “Retail or wholesale tobacco shop” has the same meaning as defined in Section 22962 of the Business and Professions Code.

(3) Cabs of motortrucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if no nonsmoking employees are present.

(4) Gaming clubs, in which smoking is permitted by subdivision (e). For purposes of this paragraph, “gaming club” means any gaming club, as defined in Section 19802 of the Business and Professions Code, or bingo facility, as defined in Section 326.5 of the Penal Code, that restricts access to minors under 18 years of age.

(5) Bars and taverns in which smoking is permitted by subdivision (e). For purposes of this paragraph, “bar” and “tavern” mean a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. Bars and taverns include those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, bars and taverns include only those areas used primarily for the sale and service of alcoholic beverages. Bars and taverns do not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

(6) Theatrical production sites, if smoking is an integral part of the story in the theatrical production.

(7) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.

(8) Private residences, except private residences licensed as family day care homes during their hours of operation as family day care homes and in those areas where children are present.

(9) Patient smoking areas in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code.

(e) (1) Except as otherwise provided in this subdivision, smoking may be permitted in gaming clubs, as defined in paragraph (4) of subdivision (d), and in bars and taverns, as defined in paragraph (5) of subdivision (d), until the earlier of the following:

(A) January 1, 1998.

(B) The date of adoption of a regulation (i) by the Occupational Safety and Health Standards Board reducing the permissible employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees or (ii) by the federal Environmental Protection Agency establishing a standard for reduction of permissible exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons.

(2) If a regulation specified in subparagraph (B) of paragraph (1) is adopted on or before January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(3) If a regulation specified in subparagraph (B) of paragraph (1) is not adopted on or before January 1, 1998, the exemptions specified in paragraphs (4) and (5) of subdivision (d) shall become inoperative on and after January 1, 1998, until a regulation is

adopted. Upon adoption of such a regulation on or after January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(f) The smoking prohibition set forth in this section constitutes a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and supersedes and renders unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment. Insofar as the smoking prohibition set forth in this section is applicable to all (100-percent) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

(g) Nothing in this section prohibits a business owner or operator from prohibiting smoking in an enclosed place of employment for any reason.

(h) The enactment of local regulation of smoking of tobacco products in enclosed places of employment by local governments shall be suspended only for as long as, and to the extent that, the (100-percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100-percent) smoking prohibition is no longer applicable to all enclosed places of employment in California, local governments have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other

provision of this section, any area not defined as a “place of employment” or in which smoking is not regulated pursuant to subdivision (d), is subject to local regulation of smoking of tobacco products.

(i) Any violation of the prohibition set forth in subdivision (b) is an infraction, punishable by a fine not to exceed one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation within one year, and five hundred dollars (\$500) for a third and for each subsequent violation within one year. This subdivision shall be enforced by local law enforcement agencies, including, but not limited to, local health departments, as determined by the local governing body.

(j) Notwithstanding Section 6309, the division is not required to respond to any complaint regarding the smoking of tobacco products in an enclosed space at a place of employment, unless the employer has been found guilty pursuant to subdivision (i) of a third violation of subdivision (b) within the previous year.

(k) If any provision of this act or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved \_\_\_\_\_, 2007

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*Governor*